

News Release



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Labor Department Sues Georgia Construction Firm and Owner To Recover Delinquent Employee Contributions

ATLANTA, Ga. – The U.S. Department of Labor sued RW Construction Inc., Hoschton, Ga., and its owner to recover more than \$12,132.44 in employee contributions owed to the company's SIMPLE IRA Plan. The suit charged Ronald B. Woodward and his company with failure to timely remit assets to the plan and allegedly using the money to pay corporate expenses.

"The law is clear. When a company sponsors a plan to benefit employees, it cannot use plan assets for any other business purpose," said Howard Marsh, director of the Atlanta regional office of the Employee Benefits Security Administration (EBSA).

The lawsuit alleges that RW Construction and Woodward violated the Employee Retirement Income Security Act (ERISA) by failing to timely remit to the plan all contributions deducted from employees' paychecks at various times between November 2000 and February 2003. The defendants also allegedly failed to take steps to collect and ensure that employee contributions were remitted to the plan, which resulted in lost earnings. In addition, the employee contributions were allegedly used to pay for the day-to-day operations of RW Construction.

The suit, filed Jan. 21, 2005, in federal district court in Gainesville, Ga., seeks a court order to require that the company and Woodward repay to the plan all losses with interest and be permanently barred from future service as a fiduciary to any plan governed by ERISA. The suit also asks the court to offset Woodward's plan account to reimburse the plan.

RW Construction is a commercial and residential grading and pipeline installation company. The plan covered as many as 9 participants and held \$31,317.78 in assets as of June 30, 2001.

Employers with similar problems, who are not yet the subject of an investigation by EBSA, may be eligible to participate in the department's Voluntary Fiduciary Correction Program (VFCP). Participation in the VFCP requires employers to correct ERISA violations but allows them to avoid EBSA enforcement actions, civil penalties and any applicable excise taxes. For more information see www.dol.gov/ebsa.

Employers and workers can contact the Atlanta office at (404) 562-2156 or EBSA's toll free number, 1-866-444-EBSA (3272), for help with any problems relating to private-sector pension and health plans.

(Chao v. RW Construction, Inc.)
Civil Action No. 2 05-CV-0013-WCO

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